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Patent Application
Attorney Docket No. 3153.00162/PC10555A

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Kendall Wayne King, et al.

APPLICATION NO.: 09/676,249 Examiner: Swartz, Rodney P.

FILING DATE: September 29, 2000 Group Art Unit: 1645

TITLE: NUCLEIC ACIDS AND PROTEINS OF THE MYCOPLASMA
HYOPNEUMONIAE MHP3 GENE AND USES THEREOF

COMMISSIONER OF PATENTS AND TRADEMARKS
WASHINGTON, D.C. 20231

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RESPONSE TO RESTRICTION REQUIREMENT

This Response is being submitted in response to an Office Action dated March 27, 2002, paper number 8. Applicants hereby Petition for an Extension of Time to Respond to the Outstanding Office Action for one month. Enclosed herewith is a check in the amount of \$110.00 in payment therefor.

Restriction to one of the following groups was required under 35 U.S.C. § 121:

Group I - Claims 1-11, drawn to protein, classified in class 424, subclass 264.1.

Group II - Claims 18-28, drawn to DNA, host cell, classified in class 536, subclass 23.7.

Group III - Claims 29-31, drawn to a method of making protein, classified in class 435, subclass 69.1.

Group IV - Claims 32-33, drawn to a method of treatment, classified in class 424, subclass 9.2.

Applicants provisionally elect Group I, claims 1-11, for prosecution purposes, with traverse. Applicants hereby conditionally withdraw claims 18-33 from prosecution, without prejudice, and request reconsideration of the restriction requirement.

Applicants traverse the restriction requirement based on the following grounds. It is respectfully submitted that the restriction requirement practice was established to promote efficiency of prosecution in the United States Patent Office. All of the groups of claims relate to the protein and uses thereof. It is a well-accepted practice in the United States Patent Office to claim a protein, a host cell containing the protein, a method of

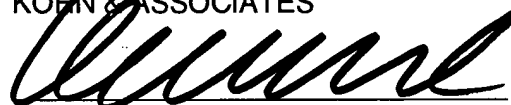
making the protein, and a method of treatment utilizing the protein in the same application and without restriction. Accordingly, Applicants believe that it is entirely reasonable, and would not present an undue burden on the Examiner, for the claims of all the groups to be kept together in the instant application. Further, the claims of Groups I and IV are classified in the same class and since there is a great amount of cross-classification amongst the subclasses of this class, it is respectfully submitted that examination of all of these groups of claims in a single application would be efficient thereby promoting the grounds for the establishment of the restriction requirement practice. Hence, it is respectfully requested that the restriction should not be required and that Applicants have traversed the restriction requirement. However, as stated above, Applicants have provisionally elected the claims of Group I and provisionally withdraw claims 18-33, without prejudice, pending reconsideration of the restriction requirement.

The Application is now in condition for allowance, which allowance is respectfully solicited.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

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Dated: May 28, 2002

CERTIFICATE OF MAILING

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I hereby certify that this correspondence is being deposited with the United States Postal Service as "Express Mail Post Office To Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.


Marie M. DeWitt